

Only firms which have been prequalified by the Office of Financial Management to provide bond counsel services for FY 2012 and 2013 to the Kentucky Higher Education Student Loan Corporation may submit a response to this Request for Proposals.

October 3, 2012

Request for Proposals (“RFP”) to Serve as Bond Counsel to the Kentucky Higher Education Student Loan Corporation for Fiscal Year 2013.

The Office of Financial Management (“OFM”), of the Finance and Administration Cabinet of the Commonwealth of Kentucky, on behalf of the Kentucky Higher Education Student Loan Corporation (“KHESLC” or the “Corporation”), is requesting proposals from prequalified firms to provide professional services of bond counsel to the Corporation during the period of July 1, 2012 through June 30, 2013 (“FY 2013”). Pursuant to KRS 45A.850, the Corporation seeks to hire one (1) bond counsel firm to provide services to the Corporation to complete potential financings by the Corporation during FY 2013.

The Corporation could potentially issue over \$1.2 billion of bonds or notes during FY 2013. KHESLC intends to refinance the Straight-A ED Conduit Program Note payable during FY 2013 for approximately \$500 million. The remaining \$700 million of possible refinancings includes auction rate bonds and variable rate demand obligations as well as a small portion of the Federal Family Education Loan Program (“FFELP”) loans currently warehoused by the Corporation. It is also possible that a transaction may include financing to allow KHESLC to acquire loans that have been rehabilitated and, therefore, ready for repurchase from the guaranty agency. Additionally, the Corporation may issue up to \$50 million to provide permanent financing in support of a private loan program.

The Corporation is currently renegotiating a line of credit with a commercial bank that is available to provide interim financing. The Corporation will likely create new indentures, as needed, to finance private education loans and/or refinance the aforementioned bonds and/or notes.

Financial information regarding the Corporation and its programs, including the Annual Financial Report and Secondary Market Disclosure, are available at the Corporation’s web site, http://www.kheslc.com/who_mission.html. Official Statements for recent transactions may be found at www.MuniOS.com or at <http://emma.msrb.org/default.aspx>.

The primary objectives of the Corporation and OFM for the bond financings are to:

1. Maximize the amount and level of legal expertise brought to each transaction;
2. Derive maximum economic benefit from new money and potential refunding issues consistent with the Internal Revenue Code, when applicable; and
3. Minimize issuance costs.

The Corporation's objectives, with respect to its financings, are as follows:

1. Develop a cost-effective, profitable private loan program.
2. Minimize or reduce financing and program risks.
3. Identify potential profit opportunities.

All debt offerings will be under the direction of the Corporation and OFM as financial advisor to the Corporation. Offerings are subject to approval by the Corporation's Board of Directors, OFM, the State Property and Buildings Commission, and the Capital Projects and Bond Oversight Committee of the Kentucky General Assembly.

Description of Services Sought

The firm engaged to perform bond counsel services will be working with the Corporation, OFM, Bank of America Merrill Lynch as senior underwriter, and selected or existing trustees. The firm selected to perform bond counsel services will be responsible for duties which include but are not limited to: notice of sale; providing legal opinions and legal advice related to debt structuring; program documentation; the legal sale and closing of securities; and tax issues including secondary market disclosure compliance and arbitrage regulation compliance; consulting with the trustees and the Corporation; drafting and circulating of required issuance documents for approval which includes duties related to the potential creation of new indentures, remarketing agreements, and liquidity agreements; reviewing the Preliminary Official Statement (POS) and final Official Statement (OS) in a negotiated sale, and coordinating the closing of all issues. Any fees incurred will be payable only upon successful closing of the issue.

Required Components of Proposal

Each response to the RFP must include and address the following items. **Failure to comply with the requirements of the RFP will result in the firm's response not being evaluated by the Selection Committee.** (See Selection and Notification.)

I. Disclosure

- A. Certify that there has been no material change to any of the statements and certifications made by the firm in its response to the **Request for Qualifications, Section II, Disclosure**, issued by OFM on January 25, 2011. In the event there has been a material change, please specify the nature of the change and the impact of the change on the firm and its ability to provide the desired services.
- B. Detail any criminal investigation, indictment, prosecution or other proceeding that has ever been brought against your firm (provide attachment if necessary). Also, describe any civil litigation pending or concluded within the last three years against your firm that would impair the firm's ability to provide the requested services (provide attachments if necessary). Also, describe the nature of any conflicts of interest that you believe may exist or arise.

- C. Disclose any potential conflicts of interest with representing the Commonwealth in this matter, including any potential conflicts of interest of employees assigned to this project and potential conflicts with any of the Corporation's members. The Commonwealth reserves the unqualified right to disqualify an entity or cancel any contract for any potential conflict of interest issues raised initially and/or during the life of any contract awarded.

II. Qualifications (80%)

A. Relevant Experience of the Firm (20%)

1. Briefly discuss your firm's future commitment to municipal finance generally and to educational finance law specifically.
2. Provide a discussion of relevant experience of the firm as bond counsel or underwriter's counsel in the area of student loan revenue bond financings.
3. Provide specific examples of transactions of similar nature and credit for which the firm has served as bond counsel or underwriter's counsel.

B. Relevant Experience and Qualifications of the Representatives of the Firm (25%)

1. Provide a discussion of the experience, qualifications and availability of the firm's representatives who would work on the Corporation's account. Provide the names and resumes of all individuals who would be assigned to work with the Corporation and identify the lead and tax counsel. Additionally, provide a statement as to the availability and willingness of the firm to perform analyses and prepare opinions concerning tax-related and/or bond resolution matters that arise during the normal course of business during the contract period. We expect that these additional services would exclude large projects such as the Voluntary Closing Agreement Program (VCAP) that would require a substantial level of analysis and counsel. **Please note that any changes made to representation for the Corporation during any engagement must be approved by the Corporation and OFM.**
2. Provide specific references for the firm and lead counsel's experience with similar issuers. Include names, addresses and telephone numbers.

C. Legal Issues That May Impact the Issuance of Debt by the Corporation (35%)

1. Discuss in general terms the relevant legal issues affecting the issuance of student loan revenue bonds. Provide a discussion of any legal issues with potential bond issuances involving (a) the refinancing of auction rate securities with LIBOR floating rate notes ("LFRNs") and (b) the financing of private loans.

2. Discuss the recent developments in federal student loan program laws and regulations, tax and arbitrage issues affecting the issuance of student loan revenue bonds.

III. Fee Proposal (Attachment B)-(20%)

Provide a fee proposal for work to be performed during the engagement period. Bond counsel fees will be paid only upon completion and closing of the respective bond issue. The Corporation will pay, with written proof, invoices for advertising notices of sale, overnight delivery, and bound and CD-ROM transcripts.

- (A.) Provide a fee proposal, assuming an approximate \$500 million issuance of LFRNs to refinance Straight-A **under a newly created indenture** on a per \$1,000 bond basis inclusive of all expenses which shall include copying, faxing, mailing, telephone, travel and other out-of-pocket expenses. **Minimum and/or maximum fees per issuance are acceptable but must be specifically detailed.**
- (B.) Assuming the refinancing in (A.) above has been completed, provide a *discounted* fee proposal for any additional issuance(s) of LFRNs **under a newly created indenture** on a per \$1,000 bond basis inclusive of all expenses which shall include copying, faxing, mailing, telephone, travel and other out-of-pocket expenses. **Minimum and/or maximum fees per issuance are acceptable but must be specifically detailed.**
- (C.) Provide an all-inclusive fee proposal, assuming a \$50 million issuance of fixed rate tax-exempt bonds **under a newly created Indenture**, indicating any one-time fees as well as per bond fees as applicable for the creation and establishment of a bond resolution that would permit the issuance of other forms of debt not previously authorized and any additional legal services that may be required for a proposed financing involving the use of variable rate instruments that would not be permitted under the Corporation's current Indentures. **Minimum and/or maximum fees per issuance are acceptable but must be specifically detailed.**

The Fee Proposal must be submitted in a separate sealed envelope. Failure to adhere to these requirements contained on Attachment B will result in disqualification of the response.

Reservation of Rights

The Corporation and OFM reserve the right to:

1. Review and approve any change in staff members significantly involved in any financing during the contract period, and discharge the firm promptly if such personnel changes do not meet the needs of the Corporation.
2. Reject any and all proposals with cause, including failure to disclose material events.

3. Reject all proposals and seek new proposals when such procedure is reasonably in the best interest of the Corporation.
4. Make investigations regarding qualifications of any or all respondents as the Selection Committee deems necessary.
5. Request and receive such additional information as the Selection Committee may reasonably require. Failure to comply with such a request will result in disqualification.
6. Waive minor irregularities in the RFP process.
7. Make all submitted proposals and any attached materials available for Open Records requests pursuant to KRS 61.870.

Liability

The Corporation and OFM shall not be liable for:

1. Any costs incurred in the preparation of any proposal.
2. Any costs incurred by the proposer in connection with any interview or negotiation relating to this RFP (i.e., travel, accommodations, etc.).
3. Any disclosure, whether by negligence or otherwise, of any material or information in any form submitted in response to this RFP.

Questions

All questions concerning this RFP must be submitted by facsimile, e-mail or writing to the address below by **12:00 noon EDT on Wednesday, October 17, 2012**. Any questions submitted, and answers thereto, may be distributed to all pre-qualified firms at the discretion of the Chairperson of the Selection Committee. Please note that questions submitted after the deadline will not receive a response.

Submission of Proposals

Six (6) hard-copies and one (1) electronic copy of each proposal and all related materials must be received no later than **4:00 p.m. EDT on Wednesday, October 24, 2012** at the following address:

Office of Financial Management
Kentucky Higher Education Student Loan Corporation
Bond Counsel FY 2013 RFP
702 Capitol Avenue, Suite 76
Frankfort, Kentucky 40601-3453
Phone: (502) 564-2924 Fax: (502) 564-7416
Marcia.Adams@ky.gov

Note: Proposals received after the stated deadline will NOT be accepted. It is the responsibility of the respondent, NOT the courier services, to meet the deadline. Facsimile copies and electronic transmissions will NOT be accepted for submission of proposals; however, one electronic copy must be received by the stated deadline in addition to the hard copy submittal for the submittal package to be considered complete.

Selection and Notification

The Selection Committee, established pursuant to KRS 45A.843, will be composed of two staff members of the Corporation (voting), three staff members of OFM (voting) and one merit employee of the State Auditor of Public Accounts (non-voting). A majority of the voting members must be Merit employees of the Commonwealth. Proposals will be evaluated by all voting members pursuant to the evaluation criteria outlined on **Attachment A**. The Selection Committee will determine whether to hold interviews of proposing firms. The Selection Committee will make a recommendation for selection pursuant to KRS 45A.840 to 45A.879. Statutes may be accessed at <http://www.lrc.ky.gov/legislation.htm>

Contact with Selection Committee Members

Please note that any contact made by the firm with any member of the Selection Committee members, from the date of issuance of the RFP until an award of contract, is required to be disclosed by such Committee member to the entire Committee and will become a part of the permanent file for this selection process which is subject to “open records requests” pursuant to Kentucky Open Records laws.

The Office of Financial Management on behalf of the Corporation respectfully solicits the submission of a proposal by your firm.

Attachments:

Attachment A: Evaluation Criteria & Form
Attachment B: Fee Proposal

ATTACHMENT A

EVALUATION CRITERIA

**Kentucky Higher Education Student Loan Corporation
Request for Proposals
Bond Counsel FY 2013**

	<u>Evaluation Criteria</u>	<u>Weight</u>
1.	Relevant Experience of the Firm	20%
2.	Relevant Experience and Qualifications of the Firm's Representatives	25%
3.	Legal Issues	35%
4.	<u>Fee Proposal</u>	<u>20%</u>
	Total	100%

ATTACHMENT A

EVALUATION FORM

**Kentucky Higher Education Student Loan Corporation
Request for Proposals
Bond Counsel FY 2013**

FIRM: _____

REVIEWER: _____

DISCLOSURE: _____ Yes _____ No

1. **RELEVANT FIRM EXPERIENCE** - (Qualifications, recent similar transactions, firm organization, firm references)

Score (20 points possible): _____

Notes: _____

2. **RELEVANT EXPERIENCE AND QUALIFICATIONS OF FIRM'S REPRESENTATIVES** - (Number and availability of staff, background, individual experience on similar transactions, identification of principal contact, and references for principal contact)

Score (25 points possible): _____

Notes: _____

3. **LEGAL ISSUES** - (Depth and quality of discussion, demonstration of understanding of the student loan industry and the Corporation's financing programs)

Score (35 points possible): _____

Notes: _____

Total Score*: _____

*Scores for fee proposals (20 points possible) will be uniformly determined by the Committee Chair.

ATTACHMENT B

FEE PROPOSAL

**Kentucky Higher Education Student Loan Corporation
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BOND ISSUANCE EXPENSE:

- (A.) Issuance of \$500 million of LFRNs inclusive of all expenses: copying, faxing, mailing, telephone, travel and other out of pocket expenses for issuance under a newly created indenture.

Price Per Note	Indenture Creation Fee	Min/Max Fee
_____	_____	_____

- (B.) Discounted pricing for additional issuance(s) of LFRNs inclusive of all expenses: copying, faxing, mailing, telephone, travel and other out of pocket expenses for issuance under a newly created indenture.

Price Per Note	Indenture Creation Fee	Min/Max Fee
_____	_____	_____

- (C.) Issuance up to of \$50 million, with all-inclusive fee indicating applicable one-time fees and per bond fees for creation of a private loan bond resolution financed through the issuance of fixed-rate tax-exempt bonds under a newly created indenture.

Price Per Bond/Note	Indenture Creation Fee	Min/Max Fee
_____	_____	_____

(A)+(B)+(C) = _____ (Total Fee for Evaluation)

***Note: The Corporation will reimburse counsel for necessary overnight mail expenses, advertising notice of sale, and for the cost of final transcripts in addition to the quoted fee.**

Signed Date

Firm